

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA
FOURTH DIVISION**

ARRIVALSTAR, INC., a foreign
corporation

Plaintiff

v.

HIGHJUMP SOFTWARE, a domestic
corporation,
FRONTIER AIRLINES., a foreign
corporation, and
NORTHWEST AIRLINES, INC., a
domestic corporation

Defendants.

Civil Action No. 04-cv-907 JNE/JGL

JURY TRIAL DEMANDED

**MEMORANDUM OF LAW IN SUPPORT OF ARRIVALSTAR'S
MOTION FOR LEAVE TO AMEND COMPLAINT**

Pursuant to Fed. R. Civ. P. 15 and Local Rule 15.1, Plaintiff ArrivalStar, Inc. ("ArrivalStar"), by and through undersigned counsel, hereby seeks leave to amend its Complaint filed in the above-captioned proceeding.

Background

ArrivalStar filed its original Complaint in this matter on February 12, 2004. Pursuant to Fed. R. Civ. P. 15, ArrivalStar filed a First Amended Complaint as a matter of course on April 30, 2004, before any responsive pleadings were served. For the reasons set forth in detail below, ArrivalStar respectfully seeks leave to amend its Complaint by filing a Second Amended Complaint.

Newly-issued ArrivalStar Patents

As averred in its Complaint and First Amended Complaint, ArrivalStar is the owner of all right, title and interest to multiple U.S. Patents in the general field of advanced notification and vehicular route optimization systems, including U.S. Patent Nos. 6,486,801; 6,510,383; 6,492,912; 6,415,207, 6,411,891; 6,363,323; 6,317,060; 6,313,760; 6,278,936; 5,657,010; 5,623,260; 5,400,020; 6,618,668; 6,683,542; 6,700,507 and 6,714,859. Subsequent to the filing of its First Amended Complaint, ArrivalStar was granted U.S. Patent Nos. 6,741,927 (issued on May 25, 2004); 6,748,318 (issued on June 8, 2004); and 6,748,320 (issued on June 8, 2004). ArrivalStar is the owner of all right, title and interest to these newly-issued patents, each of which covers technology in the general field of advanced notification and vehicular route optimization systems.

Nistevo

ArrivalStar has reached a settlement agreement with Nistevo Corporation (“Nistevo”). ArrivalStar filed a Notice of Dismissal with Prejudice as to Nistevo on June 2, 2004.

Argument

ArrivalStar hereby requests leave to amend its First Amended Complaint by (1) asserting the ‘927, ‘318 and ‘320 patents against Northwest, (2) asserting the ‘318 and ‘320 patents against Frontier, and (3) removing Nistevo from the Complaint. ArrivalStar’s proposed Second Amended Complaint embodying these amendments and copies of the ‘927 patent (Exhibit Q), the ‘318 patent (Exhibit R) and the ‘320 patent (Exhibit S), are filed herewith.

Pursuant to the Federal Rules of Civil Procedure, “leave shall be freely given when justice so requires.” Fed. R. Civ. P. 15(a). As stated above, the newly-issued ArrivalStar patents cover technology the same field of technology embodied in the previously-asserted ArrivalStar

patents, namely the general field of advanced notification and vehicular route optimization systems. ArrivalStar's assertions of infringement of its newly-issued patents arise out of the same common nucleus of operative facts as its assertions of infringement of the previously-asserted ArrivalStar patents.

Moreover, the addition of ArrivalStar's newly-issued patents to the pleadings is anticipated by the Defendants and provided for by the Court's Pretrial Order. Before the pre-trial conference in this case, ArrivalStar notified the Defendants that ArrivalStar had been granted new patents covering the relevant technology, and of the possibility that ArrivalStar may request leave of the Court to amend its First Amended Complaint to assert these patents. Indeed, the parties' joint Rule 26(f) Report, signed by the Defendants and filed with the Court on July 9, 2004, specifically set forth September 1, 2004 as the last date for ArrivalStar to file a motion to amend the pleadings *to add additional patents to the case*. Exhibit 1, Rule 26(f) Report, Sec. (b)(2).

Based on the Rule 26(f) Report, the Court entered a Pretrial Order on July 19, 2004, which stated, "1. All motions which seek to amend any pleading or to add any parties must be filed prior to September 1, 2004, to add patents and December 15, 2004, for the rest." Exhibit 2, Pretrial Order of Magistrate Judge Lebedoff, paragraph 1.

For the reasons stated above, namely because (1) the newly-issued ArrivalStar patents cover the same technology asserted in the First Amended Complaint, (2) ArrivalStar's allegations of Defendant's infringement related to its newly-issued patents arise out of the same facts asserted in the First Amended Complaint, and (3) the Rule 26(f) Report and Pretrial Order in this case provide for such an amendment, ArrivalStar submits that the Court should allow leave for ArrivalStar to amend its pleadings to assert its newly-issued patents.

The only remaining amendment ArrivalStar proposes by its Second Amended Complaint is the removal of all information related to Nistevo in order to bring the pleadings up to date with the current status of the case. Nistevo has been dismissed with prejudice from this case. Accordingly, there is no need for ArrivalStar to reiterate its assertions related to Nistevo in its Second Amended Complaint. Should ArrivalStar file a Notice of Dismissal as to another Defendant before the Court rules on the present motion, ArrivalStar reserves the right to request that information pertaining to any such Defendant be removed from the pleadings as well.

Conclusion

For the reasons set forth above, ArrivalStar respectfully requests leave of this Court to amend its Complaint by filing its proposed Second Amended Complaint.

Respectfully submitted,

ARRIVAL STAR, INC.,

By its attorneys,

Date: August 31, 2004

s/Karen D. McDaniel
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